

AMENDED IN SENATE AUGUST 21, 2014

AMENDED IN SENATE AUGUST 18, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1634

Introduced by Assembly Member Skinner

(Principal coauthor: Senator Hancock)

**(Coauthors: Assembly Members Ammiano, Bonta, Gonzalez, Quirk,
Ting, and Wieckowski)**

February 10, 2014

An act to amend Sections 6319, 6320, and 6625 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1634, as amended, Skinner. Occupational safety and health: violations.

Existing law establishes the Division of Occupational Safety and Health in the Department of Industrial Relations to enforce employment safety laws. Existing law authorizes the division to conduct hearings, inspections, and investigations regarding alleged violations of employment safety laws and to issue a citation for a violation of those laws, including violations that regulations adopted by the division classify as serious, repeat, or willful violations. Existing law authorizes the division to propose appropriate modifications concerning the characterization of violations and corresponding modifications to civil penalties for violations. Existing law requires the division, if a serious violation is not abated at the time of the initial or subsequent inspection, to require the employer to submit a signed statement under penalty of perjury that he or she has complied with the abatement terms within

the period fixed for abatement of the violation. Existing law establishes the Occupational Safety and Health Appeals Board in the department, and prescribes procedures for the appeals board to hear and decide appeals of a citation. Regulations adopted by the appeals board generally stay the abatement period of a citation until the conclusion of the appeal.

This bill would prohibit the division from granting, *for serious violations*, a proposed modification to civil penalties for abatement or credit for abatement unless the employer has *abated the violation, as specified, or has* submitted a statement to the division in accordance with existing law, and would additionally require supporting evidence with the statement *where necessary*. The bill would ~~prohibit authorize~~ the division ~~from granting to grant~~ such a modification ~~unless only if~~ *the violation has been abated, as specified, or* the signed statement and supporting evidence is received within 10 *working* days after the end of the period fixed for abatement. The bill would generally prohibit the stay or suspension of ~~an abatement period~~ *a requirement to abate the hazards affirmed by the decision or order* during the pendency before the appeals board of a petition for reconsideration of a citation for a violation that is classified as a serious violation, repeat serious violation, or willful serious violation. The bill would, ~~however,~~ authorize the appeals board to stay or suspend an abatement, upon petition by the employer, *only if* the employer demonstrates that a stay or suspension will not adversely affect the health and safety of employees.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6319 of the Labor Code is amended to
- 2 read:
- 3 6319. (a) If, after an inspection or investigation, the division
- 4 issues a citation pursuant to Section 6317 or an order pursuant to
- 5 Section 6308, it shall, within a reasonable time after the termination
- 6 of the inspection or investigation, notify the employer by certified
- 7 mail of the citation or order, and that the employer has 15 working
- 8 days from receipt of the notice within which to notify the appeals
- 9 board that he or she wishes to contest the citation or order for any
- 10 reason set forth in Section 6600 or 6600.5.
- 11 (b) Any employer served by certified mail with a notice of civil
- 12 penalty may appeal to the appeals board within 15 working days

1 from receipt of that notice for any reason set forth in Section 6600.
2 If the citation is issued for a violation involving the condition or
3 operation of any machine, device, apparatus, or equipment, and a
4 person other than the employer is obligated to the employer to
5 repair the machine, device, apparatus, or equipment and to pay
6 any penalties assessed against the employer, the other person may
7 appeal to the appeals board within 15 working days of the receipt
8 of the citation by the employer for any reasons set forth in Section
9 6600.

10 (c) The director shall promulgate regulations covering the
11 assessment of civil penalties under this chapter which give due
12 consideration to the appropriateness of the penalty with respect to
13 the following factors:

- 14 (1) The size of the business of the employer being charged.
- 15 (2) The gravity of the violation.
- 16 (3) The good faith of the employer, including timely abatement.
- 17 (4) The history of previous violations.
- 18 (d) Notwithstanding subdivision (c), if serious injury, illness,
19 exposure, or death is caused by any serious, willful, or repeated
20 violation, or by any failure to correct a serious violation within the
21 time permitted for its correction, the penalty shall not be reduced
22 for any reason other than the size of the business of the employer
23 being charged. Whenever the division issues a citation for a
24 violation covered by this subdivision, it shall notify the employer
25 of its determination that serious injury, illness, exposure or death
26 was caused by the violation and shall, upon request, provide the
27 employer with a copy of the inspection report.

28 (e) The employer shall not be liable for a civil penalty under
29 this part for any citation issued by a division representative
30 providing consulting services pursuant to Sections 6354 and 6355.

31 (f) Whenever a citation of a self-insured employer for a willful,
32 or repeat serious violation of the standard adopted pursuant to
33 Section 6401.7 becomes final, the division shall notify the director
34 so that a hearing may be held to determine whether good cause
35 exists to revoke the employer's certificate of consent to self-insure
36 as provided in Section 3702.

37 (g) Based upon the evidence, the division may propose
38 appropriate modifications concerning the characterization of
39 violations and corresponding modifications to civil penalties as a
40 result thereof. ~~The~~ *For serious violations, the* division shall not

1 grant a proposed modification to civil penalties for abatement or
2 credit for abatement unless the employer has ~~submitted~~ *done any*
3 *of the following:*

4 (1) *Abated the violation at the time of the initial inspection.*

5 (2) *Abated the violation at the time of a subsequent inspection*
6 *prior to the issuance of a citation.*

7 (3) *Submitted a signed statement under penalty of perjury and*
8 *supporting evidence, when necessary to prove abatement, in*
9 *accordance with subdivision (b) of Section 6320.*

10 SEC. 2. Section 6320 of the Labor Code is amended to read:

11 6320. (a) If, after inspection or investigation, the division
12 issues a special order, order to take special action, or a citation for
13 a serious violation, and if at the time of inspection the order is not
14 complied with or the violation is not abated, the division shall
15 conduct a reinspection in the following cases:

16 (1) All inspections or investigations involving a serious violation
17 of a standard adopted pursuant to Section 6401.7, a special order
18 or order to take special action, serious violations of those orders,
19 and serious violations characterized as repeat or willful or with
20 abatement periods of less than six days. These reinspections shall
21 be conducted at the end of the period fixed for compliance with
22 the order or abatement of the violation or within 30 days thereafter.

23 (2) At least 20 percent of the inspections or investigations
24 involving a serious violation not otherwise scheduled for
25 reinspection. These inspections shall be randomly selected and
26 shall be conducted at the end of the period fixed for abatement of
27 the violation or within a reasonable time thereafter.

28 (b) Whenever a serious violation is not abated at the time of the
29 initial or subsequent inspection, the division shall require the
30 employer to submit a signed ~~statement~~ *statement*, with supporting
31 evidence, *where necessary to prove abatement*, under penalty of
32 perjury, that he or she has complied with the abatement terms
33 within the period fixed for abatement of the violation. The division
34 may grant a modification pursuant to subdivision (g) of Section
35 6319 only if *the employer has abated the violation at the time of*
36 *the initial or subsequent inspection or the statement, signed under*
37 *penalty of perjury, and supporting evidence are received within*
38 *10 working days after the end of the period fixed for abatement.*
39 *At no time shall the period for abatement be fixed prior to the*
40 *issuance of a citation. The submission of a signed abatement*

1 *statement shall not be considered as evidence of a violation during*
2 *an appeal.* The division shall include on the initial notice of civil
3 penalty a clear warning of reinspection for failure to submit the
4 required statement in the time allotted, and of an additional,
5 potentially substantial monetary penalty for failure to abate the
6 violation. If the division fails to receive evidence of abatement or
7 the statement within 10 working days after the end of the abatement
8 period, the division shall notify the employer that the additional
9 civil penalty for failure to abate, as provided in Section 6430, will
10 be assessed retroactive to the end of the abatement period unless
11 the employer can provide sufficient evidence that the violation
12 was abated prior to that date. The division shall conduct a
13 reinspection of serious violations within 45 days following the end
14 of the abatement period whenever it still has no evidence of
15 abatement.

16 SEC. 3. Section 6625 of the Labor Code is amended to read:

17 6625. (a) (1) Except as provided in subdivision (b), the filing
18 of a petition for reconsideration shall suspend for a period of 10
19 days the order or decision affected, insofar as it applies to the
20 parties to the petition, unless otherwise ordered by the appeals
21 board. ~~The~~

22 (2) *Except as provided in subdivision (b), the appeals board*
23 *upon the terms and conditions which it by order directs, may stay,*
24 *suspend, or postpone the order or decision during the pendency of*
25 *the reconsideration.*

26 (b) The filing of a petition for, or the pendency of,
27 reconsideration of a final order or decision involving a citation
28 classified as serious, repeat serious, or willful serious ~~may~~ *shall*
29 *not stay or suspend the order or decision only if requirement to*
30 *abate the hazards affirmed by the decision or order unless the*
31 *employer demonstrates by a preponderance of the evidence that a*
32 *stay or suspension of abatement will not adversely affect the health*
33 *and safety of employees. The employer must request a stay or*
34 *suspension of abatement by filing a written, verified petition with*
35 *supporting declarations within 10 days after the filing issuance of*
36 *the order or decision.*